Supreme Court, U.S.
FILED
APR 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

85 - 1715

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE CITY HOSPITAL OF BELLAIRE,
Petitioner,

v.

NANCY DELGUZZO, EXECUTRIX, ETC.,
Respondent.

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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April 21, 1986

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THE SUPREME COURT OF OHIO
COLUMBUS

1986 TERM

To wit: January 22, 1986

Case No. 85-1801

NANCY DELGUZZO, EXRX.,
Appellee,

v.

CITY HOSPITAL OF BELLAIRE,
Appellant.

ENTRY

Upon consideration of the motion for an order directing the Court of Appeals for Belmont County to certify its record and the claimed appeal as of right from same said Court to certify its record and the claimed appeal as of right from said Court, it is ordered by the Court that said motion is overrruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, $20.00, paid by G. P. Duff.

/s/ Frank D. Celebrezze
FRANK D. CELEBREZZE
Chief Justice

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this date Feb. 06, 1986.

JAMES WM. KELLY
Clerk

/s/ Sam J. Adkins
Deputy

OHIO OFFICIAL REPORTS—ADVANCE SHEETS

Vol. 21, No. 7

OHIO
SUPREME COURT'S ANNOUNCEMENTS

Wednesday, January 22, 1986

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL CONSTITUTIONAL QUESTION AND MOTION FOR LEAVE TO APPEAL OR MOTION TO CERTIFY RECORD OVERRULED

* * * *

85-1801

Nancy DELGUZZO, Exrx.

v.

CITY HOSPITAL OF BELLAIRE. BELMONT COUNTY

Holmes, Brown and Wright, JJ., dissent

STATE OF OHIO)
) ss:
BELMONT COUNTY)

IN THE COURT OF APPEALS OF OHIO
SEVENTH DISTRICT

Case No. 85-B-33

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff-Appellee,

—vs—

JOSEPH L. WILLIAMS, M.D., *et al.*,

and

CITY HOSPITAL OF BELLAIRE,
Defendant-Appellant.

JOURNAL ENTRY

Notice of Appeal filed on September 30, 1985 from a final judgment filed August 12, 1985 sua sponte dismissed as untimely filed.

Rule 4(A) of the Ohio Rules of Appellate Procedure states:

> "In a civil case the notice of appeal required by Rule 3 shall be filed with the Clerk of the trial court within thirty days of the date of the entry of judgment or order appealed from."

This rule is mandatory and this court has no discretion to allow delayed appeals in a civil matter.

Appeal dismissed. Costs to be taxed against appellant.

[Filed Oct. 23, 1985]

/s/ Joseph Donofrio

/s/ Edward Cox

/s/ Joseph E. O'Neill
Judges

COX, J.

I feel that under the facts of this case, in which all parties agree that the notice of appeal was mailed well within rule, and for some unknown reason was never received by the clerk's office, that the appeal, in all fairness, should not be dismissed.

However, Ohio does not have a rule similar to the federal rules which gives this court any discretion in the matter.

I find the enforcement of Ohio Rules of Appellate Procedure 4(A), under this statement of facts, to be patently unfair, and I signed the entry of dismissal only because I find that I have no authority to do otherwise.

APPROVED:

/s/ Edward A. Cox
EDWARD A. COX
Judge

Concur—J. DONOFRIO

[Filed Oct. 23, 1985]

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff

VS.

JOSEPH L. WILLIAMS, M.D., *et al.*,
Defendants

JOURNAL ENTRY

The Motion to Vacate and the Motion to Amend Pleadings and for a trial date of the Defendant, City Hospital of Bellaire, were submitted to the Court upon the memoranda of the said Defendant; and of the Plaintiff, Nancy DelGuzzo, Executrix. Upon consideration of all the matters before it, and a review of the complete file herein, it is hereby ordered that both Motions are overruled.

Special Entry.

/s/ Charles F. Knapp
Judge

[Filed Aug. 12, 1985]

STATE OF OHIO, COUNTY OF BELMONT, SS:
IN THE COURT OF COMMON PLEAS

Case No. 80-CIV-134

NANCY DELGUZZO, EXECTRUIX, *et al.*,
Plaintiffs

vs.

JOSEPH L. WILLIAMS, M.D., *et al.*,
Defendants

[Filed Aug. 2, 1985]

OPINION AND DECISION

Decided by the Honorable Charles K. Knapp

August 2, 1985

Knapp, J:

The defendant, City Hospital of Bellaire, has filed two motions; the first motion is to vacate the court's judgment entered March 22, 1985; the second motion is to amend pleadings and request a trial date.

The court has re-examined the complete file of this matter and in particular the court's order of September 21, 1982 and its opinion and decision dated March 20, 1985.

On September 21, 1982 the court entered an order that required this case to be arbitrated and a portion of that order reads as follows:

> "The report and award unless rejected pursuant to law shall be final."

The majority of the arbitration panel filed their report and award with the court on August 3, 1984. On October 31, 1984, the defendant, City Hospital of Bellaire, filed a motion requesting that the court modify the arbitration award by deducting therefrom the value of the covenant previously entered into between the plaintiff and defendants, Joseph L. Williams, M.D., Bellaire Medical Group, Inc., Angelo J. Antalis, M.D., Peter Lancione, M.D., and their surety, The Medical Protective Company of Fort Wayne, Indiana. The court can come but to only one conclusion; that said motion was filed under Revised Code Section 2307.32. It should have been filed under Section 2711.11.

Section 2711.21 of the Ohio Revised Code sets forth that the arbitration proceeding shall be conducted in accordance with Sections 2711.06 to 2711.16.

Section 2711.13 provides in part as follows:

> "Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or

his attorney within three months after the award is delivered to the parties in interest * * * *"

The defendant, City Hospital of Bellaire, has not followed the procedure as set forth in Section 2711.21 and the court can find no legal justification to vacate its judgment entered March 22, 1985 and said defendant's motion to amend pleadings and for trial date filed April 2, 1985 is not within time. Therefore, both motions are hereby overruled.

Counsel for plaintiff is instructed to prepare the appropriate docket and journal entry consistent with this opinion and decision and to file same with the court within 15 days. Cost to the defendant, City Hospital of Bellaire.

COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DELGUZZO, EXECUTRIX,
Plaintiff

vs.

JOSEPH L. WILLIAMS, M.D., *et al.*,
Defendants

JUDGMENT JOURNAL ENTRY

This matter came on to be heard on the Motion of the Defendant, The City Hospital of Bellaire, to modify the award of the arbitrators, and on the Motion of Plaintiff to confirm the award. Both parties submitted supplemental memoranda.

The Court is of the opinion that the arbitrators in their majority opinion determined that the Defendant, The City Hospital of Bellaire, should pay $675,000.00 to the Plaintiff.

It is therefore ordered that the Motion of the Defendant, The City Hospital of Bellaire, to modify the award is hereby overruled.

The Motion of Plaintiff to confirm the award is hereby sustained. Judgment is hereby rendered in favor of Plaintiff and against the Defendant, The City Hospital of Bellaire, in the amount of $675,000.00, with interest from the date of this Entry.

Special Entry.

/s/ Charles F. Knapp
Judge

[Filed Mar. 22, 1985]

STATE OF OHIO, COUNTY OF BELMONT, SS:
IN THE COURT OF COMMON PLEAS

Case No. 80-CIV-134

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff,

vs.

JOSEPH L. WILLIAMS, M.D., *et al.*,
Defendants.

[Filed Mar. 20, 1985]

OPINION AND DECISION

Decided by the Honorable Charles F. Knapp

March 20, 1985

KNAPP, J:

This cause came on for hearing on motion of the defendant, The City of Hospital of Bellaire, to modify the arbitration award and motion of plaintiff, Nancy DelGuzzo, Executrix, to confirm the arbitration award.

This decision and opinion is based on the oral arguments and testimony adduced at the hearing before the court on February 5, 1985 and memorandums submitted by the parties.

The motion of the defendant, The City Hospital of Bellaire, is not based on Revised Code Section 2711.11 entitled "Court May Modify Award." However, the court from the complete examination of the court's file including all the pleadings, memorandums, and in particular the arbitrators' findings of fact, both majority and minority opinions, finds that said findings of fact by the majority of the arbitration board are not erroneous, that the decision is in accordance with the applicable law, and that the procedures for conducting the hearing were fair, proper and without prejudice to either party.

The defendant, The City Hospital of Bellaire, has requested that the arbitration award be modified by deducting therefrom the value of the covenant previously entered into between plaintiff and the other defendants.

The City Hospital of Bellaire is relying on Revised Code Section 2307.32 and in particular paragraph (F). Said code section is entitled "Enforcement of contribution; elimination of action; effect of judgment findings by court or jury, release, etc." Paragraph (F) of said section reads as follows: "When a release or covenant not to sue to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: 1. It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms otherwise provide, but it

reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; 2. It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor."

The State of Ohio has modified the common law of contribution among joint tortfeasors by enacting Revised Code Section 2307.31 and 2307.32.

There is no question that the law in Ohio provides that if two or more persons are jointly and severally liable for a wrongful death there is a right of contribution among them irrespective of whether judgment has been recovered against all or any of them, Revised Code Section 2307.31 (A). The right exists only in favor of a person who has paid an amount in excess of his proportionate share. In determining the proportionate share that a tortfeasor should pay the relative degree of fault of the tortfeasor should be considered, Revised Code Section 23037.31 (F).

It appears from both the majority and minority opinions of the arbitrators that the focus was strictly on The City Hospital of Bellaire.

In the instant case the majority award of the arbitrators was as follows: "We, the undersigned, being two (2) of the arbitrators, do hereby find in favor of the Plaintiff and against the Defendant, The City Hospital of Bellaire, and assess damages in the amount of Six Hundred Seventy Five Thousand Dollars ($675,000.00) to the Plaintiff, Nancy DelGuzzo, Executrix of the Estate of Ettor DelGuzzo Jr."

The dissenting arbitrator stated as follows: "It is the recommendation of this arbitrator that final judgment be rendered in favor of Defendant, The City Hospital of Bellaire, in all respects.

To further bolster the court's conclusion that all three arbitrators were focusing strictly on the defendant, The City Hospital of Bellaire, the arbitrators knew that the other defendants had given a covenant not to sue and there was no attempt by the arbitrators to determine the degree of fault among the joint torfeasors.

The only calculation of damages in the majority opinion is based on Dr. Burke's testimony of earning capacity of the decedent in the amount of Six Hundred Seventy Five Thousand Dollars ($675,000.00). Without taking into consideration an increase in average base income or investment factor, this figure is the exact amount of the award, therefore, we must assume the loss of services, loss of companionship, and mental anguish were not considered in the award, because the arbitrators had knowledge of the covenant previously entered into between plaintiff and co-defendants.

The court is of the opinion that the arbitrators in their majority opinion determined the proportionate share that the defendant, The City Hospital of Bellaire, should pay, that being, Six Hundred Seventy Five Thousand Dollars ($675,000.00).

The motion of defendant, The City Hospital of Bellaire, to modify the award is overruled. The motion of the plaintiff to confirm the award is hereby sustained.

Judgment is hereby rendered in favor of plaintiff and against the defendant, The City Hospital of Bellaire, in the amount of Six Hundred Seventy Five Thousand Dollars ($675,000.00) with interest from the date of judgment.

Counsel for plaintiffs is to prepare a docket and journal entry in conformity with this opinion and decision and to submit same to the court within fifteen (15) days.

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DEL GUZZO, EXECUTRIX OF THE ESTATE OF
ETTOR DEL GUZZO, JR., DECEASED,
Plaintiff

—VS—

DR. JOSEPH L. WILLIAMS, *et al.*,
Defendant

FINDINGS

We, the undersigned, being two (2) of the arbitrators, do hereby find in favor of the Plaintiff and against the Defendant, The City Hospital of Bellaire, and assess damages in the amount of Six Hundred Seventy Five Thousand ($675,000.00) to the Plaintiff, Nancy Del Guzzo, Executrix of the Estate of Ettor Del Guzzo., Jr.

/s/ Peter S. Olivito
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Suite 606-612 Sinclair Building
Steubenville, Ohio 43952
Telephone: (614) 283-3341

/s/ Rodney D. Hanson
RODNEY D. HANSON, Arbitrator
320 Howard Street
Bridgeport, Ohio 43912
Telephone: (614) 635-0162

PROOF OF SERVICE

A copy of the foregoing Findings have been mailed by regular United States mail, this 2nd day of August, 1984, to John G. Lancione, Attorney for Plaintiff, 1500 National City Building, Cleveland, Ohio 44114; Richard L. Lancione, Attorney for Plaintiff, 101 The Professional Complex, P.O. Box 0, Bellaire, Ohio 43906; Ted S. Cooper, Attorney for Defendant, Hayes, Cooper, Campbell and Prest, P.O. Box 819, Steubenville, Ohio 43952; and Gayle E. Arnold, Arbitrator, 1559 Broad Street, Columbus, Ohio 43215.

/s/ Peter S. Olivito
PETER S. OLIVITO, Arbitrator

/s/ Rodney D. Hanson
RODNEY D. HANSON, Arbitrator

IN THE COMMON PLEAS COURT
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DEL GUZZO, EXECUTRIX OF THE ESTATE OF
ETTOR DEL GUZZO, JR., DECEASED,
Plaintiff

—VS—

DR. JOSEPH L. WILLIAMS, *et al.*,
Defendants

FINDING OF FACT

The following finding of fact is made by the majority of the arbitration panel pursuant to the judgment entry dated September 21, 1982.

Plaintiff, Nancy Del Guzzo, is the surviving spouse of Ettor Del Guzzo, Jr., and the Executrix of his estate.

Defendant is The City Hospital of Bellaire, stiuated in the City of Bellaire, County of Belmont and State of Ohio.

On November 17, 1979, Ettor Del Guzzo, Jr., age forty-six (46) years, was brought to the emergency room of The City Hospital of Bellaire for the first time at 4:10 o'clock P.M. by the Bellaire Emergency Squad.

The emergency room record lists as a history of the complaint or injury that Ettor Del Guzzo, Jr., "was sweating and turned white. Pt passed out for approximately 5 minutes." This record also states that Ettor Del Guzzo, Jr., took some drugs all at once, got lightheaded and then nauseated and almost passed out. This was what had been told to Nurse Eleanor Chase by the emer-

gency squad which had brought Ettor Del Guzzo, Jr., to the emergency room. The record also indicates that upon examination, he was pale and diaphoretic. The diagnosis was "near syncope episode—probably due to medication." This diagnosis was entered on the record by Dr. Joseph L. Williams, the emergency room physician.

A policy existed in the emergency room at The City Hospital of Bellaire that whenever patients were brought to the emergency room, their personal physicians were to be notified. Although the emergency room record indicated that Dr. Peter Lancione was the family physician, neither Dr. Williams nor Nurse Eleanor Chase, a registered nurse working in the emergency room, notified Dr. Lancione that his patient was at the emergency room.

Ettor Del Guzzo, Jr., was sent home from the emergency room. Subsequently, Dr. Lancione called the emergency room to inquire of his patient's condition and Nurse Chase told him that the patient had gone home and that she was too busy and forgot to call Dr. Lancione.

At approximately 8:30 o'clock P.M. on the same day, Ettor Del Guzzo, Jr., was again brought to the same emergency room by the Bellaire Emergency Squad. Nurse Chase and Dr. Williams learned from a scanner report that Ettor Del Guzzo, Jr., was bleeding rectally; was cold and clammy; diaphoresing; and that a blood pressure could not be obtained.

Upon examination at the emergency room, he was found to be pale and diaphoretic. His blood pressure was 110/. A nasogastic tube was inserted and maroon blood was obtained. It was noted that there was a past history of ulcer disease. However, theer was no rectal examination made nor was there any testing of a stool specimen for blood.

As earlier, Dr. Lancione was not contacted by anyone in the emergency room. At 8:45 o'clock P.M., at the insistence of Nancy Del Guzzo, Dr. Williams called Dr. A.J. Anetalis.

As a result of this telephone commuication, at 9:00 o'clock P.M., Ettor Del Guzzo, Jr., was then admitted to the Step-Down Unit. This is an intermediate care unit between a critical care environment and a general hospital ward. A blood infusion was begun at 10:30 o'clock P.M. Although the Nurse's Observations state that Dr. Williams called at 11:00 o'clock P.M. to inquire as to the patient's condition, no physician saw him until 2:10 o'clock A.M. the following morning.

This was brought about by a call made to Dr. Anetalis at 1:20 o'clock A.M. by Nurse Mica Boso Van Fossen. At 1:35 o'clock A.M., Ettor Del Guzzo began deteriorating rapidly, yet no physician was called by the nursing staff until 1:50 o'clock A.M. when Dr. Anetalis was called.

Dr. Anetalis arrived at The City Hospital at 2:10 o'clock A.M. and Dr. Lancione, who had been called by Dr. Anetalis, arrived at 2:30 o'clock A.M. To this point, nothing had been done to determine the severity of the gastronintestinal bleeding and its origin.

The City Hospital of Bellaire had only two (2) units of blood on hand. Additional units were obtained from Wheeling Hospital in Wheeling, West Virginia, by the request of Dr. Jess S. Renedo, a pathologist from Wheeling Hospital and a friend of the Del Guzzo family who was called to The City Hospital by a family friend at approximately 3:00 o'clock A.M.

Dr. Lancione called Dr. Ghaphery, a surgeon, and he arrived at The City Hospital at 5:20 o'clock A.M. At 6:20 o'clock A.M., Ettor Del Guzzo, Jr., was taken to surgery. He expired at 2:55 o'clock P.M.

Despite the obvious signs of severe gastrointestinal bleeding, Ettor Del Guzzo, Jr., was permitted to exsanguinate without proper intervention by the personnel and staff of The City Hospital of Bellaire.

At page 33 of his deposition, Dr. Wilmer Leigh Thompson states that a surgeon should have been notified when Ettor Del Guzzo, Jr., arrived at the emergency room with the signs and symptoms of gastorintestinal bleeding. At page 34 of his deposition, Dr. Thompson states that had an appropriate history been taken, again gastrointestinal bleeding would have been apparent.

Dr. Thompson, at Pages 38-39, further states:

> "And none of the appropriate things in terms of his therapy were done. He should have had two IV's put in with a large bore, he should have had whole blood pumped into him, he should have had plasmonate or albumin or some other colloid put into him—
>
> And so this man was literally put on this ward and allowed to bleed to death. Now, it was clear that when he came into the hospital, even though his blood pressure was low and the ambulance attendants recognized he was very sick, it's clear that he was salvageable at that time—since there was no physician there, obviously it was the nurses' responsibility to find out how to access this man's degree of illness and to make a judgment as to whether they needed to call in a physician to see him. In a situation like this in a community hospital where they have no house staff present in the hospital on the ward all the time, that falls to the nurse to make those kinds of judgments."

At page 68 of his deposition, Dr. Thompson was asked:

> "Would you say that if the general surgeon had been called at 2:00 o'clock that Mr. Del Guzzo was

capable of being appropriately managed and been able to survive?

His reply was:

"If all the other facilities needed to take care of him had, in fact, been intact, in other words, if there had been adequate blood in the hospital, adequate catheters to give the blood, adequate monitoring, adequate nursing care and so forth. Presuming that he were in an adequate hospital at the time, I think that up to 2:00 o'clock, he probably could have been salvaged."

Further, at Page 75 of his deposition, Dr. Thompson states:

"—the major problem here was that until 1:30, the nurses didn't recognize and Dr. Williams didn't transmit the fact that this man was about to die."

At page 56 of his deposition, Dr. Williams states that it is the responsibility of the attending nurses to report the condition of the patient to physicians.

At page 19 of her deposition, Nurse Chase states that it is a general rule that if a patient in the emergency room is in need of emergency care, the emergency room physician will render the care. At page 31, Nurse Chase states that it is the nurse's duty to call the family physician from the emergency room and that it was she who decided not to call Dr. Lancione.

It was the inaction or failure to act on the part of the nurses and staff of the Defendant, The City Hospital of Bellaire, which we find to fall below the generally accepted standard of care.

The conduct of the nurses and staff of the Defendant, The City Hospital of Bellaire, demonstrates a failure to

discern the very real seriousness of the condition of Ettor Del Guzzo, Jr., from the time he was first brought into the emergency room until approximately 1:35 o'clock A.M. the next morning.

Dr. Peter Lancione testified that the bloody stools were indicative of gastrointestinal bleeding and that had he attempted to stop the bleeding earlier without success he would have called a surgeon at that time.

Dr. Francis Sunseri testified that in his experience, never had a patient with bleeding ulcers bled to death. Dr. Lancione testified that when surgery was performed, it revealed that Ettor Del Guzzo, Jr., had an ulcer approximately the size of a five-cent piece which has perforated and that it was hemorrhaging.

As to damages, Dr. John F. Burke, Jr., an economist and consultant testified that the average base income that his calculations were based on was Twenty-Seven Thousand Dollars ($27,000.00) per year. Ettor Del Guzzo, Jr., was forty-six (46) years old and had a life expectancy of seventy-three (73) years but because of his personal habits, Dr. Burke stated the expectancy should be reduced to two (2) years, thus leaving an adjusted life expectancy of twenty-five (25) years. Multiplying the adjusted life expectancy of twenty-five (25) years by the average base annual income of Twenty-Seven Thousand Dollars ($27,000.00), Ettor Del Guzzo, Jr., would have earned Six Hundred Seventy-Five Thousand Dollars ($675,000.00) without taking into consideration any increase in the average base income or investment factor.

We, therefore, find in favor of the Plaintiff and against the Defendant, The City Hospital of Bellaire, and assess damages in the amount of Six Hundred Seventy-Five Thousand Dollars ($675,000.00) to the Plaintiff, Nancy Del Guzzo, Executrix of the Estate of Ettor Del Guzzo, Jr.

Respectfully submitted,

/s/ Peter S. Olivito
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Telephone: (614) 283-3341

/s/ Rodney H. Hanson
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PROOF OF SERVICE

The undersigned hereby certify that true copies of the foregoing Finding of Fact were served upon the following by ordinary United States Mail, postage prepaid, on this 2nd day of August, 1984.

JOHN G. LANCIONE, Esquire
1500 National City Bank Building
Cleveland, Ohio 44114

RICHARD LANCIONE, Esquire
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TED S. COOPER, Esquire
Hayes, Cooper, Campbell and Prest
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GAYLE E. ARNOLD, Esquire
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Columbus, Ohio 43215

/s/ Peter S. Olivito
PETER S. OLIVITO, Arbitrator

/s/ Rodney D. Hanson
RODNEY D. HANSON, Arbitrator

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

Case No: 80-CIV-134

NANCY DELGUZZO, EXECUTRIX,
Plaintiff,

vs.

JOSEPH L. MCWILLIAMS, M.D., *et al.*,
Defendants.

DISSENTING OPINION

Because I disagree in a number of material respects with the findings of fact made by the majority of the arbitration panel as set forth in their Finding of Fact, I must respectfully dissent from that opinion. For the reasons set forth herein, I find in favor of the Defendant, The City Hospital of Bellaire, and against the Plaintiff on the Complaint herein. It is my decision, based upon the evidence presented and the law of Ohio that the agents and employees of The City Hospital of Bellaire complied with accepted standards of professional care for nurses in the circumstances presented. Therefore, I recommend that final judgment be entered in favor of Defendant, The City Hospital of Bellaire.

The analysis of this case presented in the majority opinion fails in at least two respects. First, the finding that conduct of Defendant's nurses fell below accepted standards of professional care in failing to notify certain physicians of Mr. Delguzzo's condition is based upon an erroneous interpretation of the facts presented in evidence. Secondly, the finding that any such delay was a proximate cause of Mr. Delguzzo's death was based

not only upon an erroneous interpretation of the facts in evidence, but also ignores the law of Ohio.

The total focus of the majority opinion, and the sole issue as identified by Plaintiff, is the lack of a telephone call to Dr. Lancione at the time Mr. Delguzzo first appeared in the emergency room of The City Hospital of Bellaire on November 19, 1979. However, the most enlightening and critical evidence regarding that issue is the testimony of Nurse Eleanor Chase and Dr. Joseph Williams. These two were present at the time of Mr. Delguzzo's first visit, and their uncontroverted explanations of the sequence of events is determinative of this issue.

Both Dr. Williams and Nurse Chase consistently testified that when Mr. Delguzzo first presented at the emergency room at approximately 4:00 p.m. there were a number of other patients being treated at that time in the emergency room. Nurse Chase talked to the emergency squad personnel and checked Mr. Delguzzo's vital signs. Since he appeared stable, she left the emergency room to take a heart attack patient to the intensive care unit. During the time she was involved in transporting this heart attack patient, Mr. Delguzzo was seen in the emergency room by Dr. Williams. As a result of that examination, Dr. Williams determined that he would not admit Dr. Delguzzo as a patient in the hospital. This examination and consultation with Dr. Williams was completed before Nurse Chase had an opportunity to take any history from the patient or contact the family physician, Dr. Lancione. In fact, she did not even know the identity of the family physician until Mr. Delguzzo was getting ready to leave the emergency room. Shortly after Mr. Delguzzo left, Dr. Lancione called the emergency room and discussed Mr. Delguzzo's condition directly with Dr. Williams. At that time, Dr. Lancione had no discussion whatsoever with Nurse Chase. Dr. Williams informed Dr. Lancione that Mr. Delguzzo had

been sent home and was not admitted. There was no complaint, challenge, question or other contrary comment expressed by Dr. Lancione to Dr. Williams at that time regarding this decision. Nurse Chase was aware of this telephone conversation between Dr. Lancione and Dr. Williams. Nurse Chase did not call Mr. Delguzzo's family physician, as per hospital policy, solely because of the action taken by Dr. Williams and the ensuing telephone conversation between Dr. Williams and Dr. Lancione. There simply is no merit whatsoever to the argument now, with the benefit of hindsight, that a telephone call to Dr. Lancione at the time Mr. Delguzzo was physically present in the emergency room would have resulted in his being admitted to the hospital. Despite the fact that Dr. Lancione gave such testimony, even he also admitted that this was "speculation with the benefit of hindsight". Such speculation is not appropriate evidence. Moreover, this speculation by Dr. Lancione is further magnified upon consideration of his bias as a relative of Mr. Delguzzo and Plaintiff's attorney. Additionally, it is apparent from the evidence that Mr. Delguzzo was an independent, strong-willed individual who wanted to return home rather than be admitted to the hospital on this occasion.

Dr. Lancione's "speculation" that he would have admitted Mr. Delguzzo as a patient is further undermined by the fact that, after his telephone conversation with Dr. Williams, Dr. Lancione made no other efforts to contact Mr. Delguzzo, and instead went out for a social engagement that evening without notifying the hospital or Mr. Delguzzo's family where he could be located in case of any emergency.

Later in the same evening when Mr. Delguzzo returned to the emergency room, Nurse Chase made a number of attempts to contact Dr. Lancione through the telephone numbers provided. After a number of unsuccessful efforts, the family advised her that she should attempt to

contact Dr. Anetalis. She was successful in reaching him and, after a telephone conference between Dr. Anetalis and Dr. Williams, Mr. Delguzzo was admitted as a patient in the step-down unit.

Again, it is critical to analyze the testimony of Dr. Williams, which the majority opinion chooses to ignore. It is clear from his testimony that Dr. Williams was advised that Dr. Anetalis would personally come to the hospital later that evening to check on Mr. Delguzzo's condition. This information was relayed by Dr. Williams to Nurse Chase and, through Nurse Chase, to the other hospital nurses on the floor where Mr. Delguzzo was admitted. The failure of Dr. Anetalis to respond in a timely manner and come to the hospital to see Mr. Delguzzo is not a matter for which the Defendant Hospital can be held liable. The nursing staff of the hospital had been informed, through Dr. Williams, after his phone conversation with Dr. Anetalis, to expect Dr. Anetalis at the hospital sometime later that evening so see Mr. Delguzzo. The evidence is clear throughout this case that later in the night when Mr. Delguzzo's family and friend became anxious because no doctor had yet been to the floor to see Mr. Delguzzo the nursing staff consistently relied upon the representation made earlier that Dr. Anetalis would be there. This was appropriate and acceptable conduct by the nursing staff, particularly in light of the fact that Mr. Delguzzo's condition remained relatively stable through the night into the early morning hours of November 18th.

Perhaps the most significant aspect of this case, which has been totally overlooked by the majority opinion, is the incident which caused Mr. Delguzzo's condition to take a drastic turn for the worse. The hospital records indicate that at 1:30 a.m. on November 18th, Dr. Anetalis was called regarding Mr. Delguzzo's condition. At that time, he ordered an intramuscular injection of Mepergan 50/50. This was manifestly inappropriate medication for

Mr. Delguzzo, who had a compromised ability to maintain blood pressure and a depleted blood volume. In response to the administration of this inappropriate medication, Mr. Delguzzo deteriorated abuptly, leading to his death. Had this medication not been ordered, Mr. Delguzzo's condition would not have deteriorated either so significantly or so rapidly. It was completely inappropriate for Dr. Anetalis to order this medication without full knowledge of the history of Mr. Delguzzo's illness at the time, and without having seen him, but there can be no liability attached to the hospital for following this physician's orders. Specifically, Dr. Douglas Rund testified that giving this medication was contraindicated, and that Mr. Delguzzo's condition deteriorated as a direct result of that injection. Likewise, Dr. Francis Sunseri testified that the Mepergan injection ordered by Dr. Anetalis was inappropriate.

Both Dr. Rund and Dr. Sunseri testified that the hospital nursing personnel exercised appropriate care and skill in rendering care to Mr. Delguzzo. Further, both of those physicians also testified that Mr. Delguzzo's release from the emergency room on his first visit there shortly after 4:00 p.m. was *not* a proximate cause of his death. Finally, both of those physicians also testified that Dr. Anetalis' order for an injection of Mepergan was inappropriate, and was a direct cause of the abrupt deterioration of Mr. Delguzzo's condition, leading to his death.

The crux of Plaintiff's complaint against the hospital is that nurses' failure to timely notify Dr. Lancione adversely affected Mr. Delguzzo's chances of survival. The form of this allegation has been specifically addressed and rejected by the Supreme Court of Ohio in *Cooper v. Sisters of Charity*, 27 Ohio St. 2d 242 (1971). In *Cooper, supra*, the Supreme Court carefully distinguished between the concepts of *causing injury* and merely increasing the risk of harm. The Court rejected the tests of "chance

of recovery" or "substantial possibility of survival", and determined that only in the event an injury was the probable result of the defendant's negligence would liability arise. Of particular import to the instant case was the specific holding in *Cooper*, wherein the Court stated:

> In an action for wrongful death, where medical malpractice is alleged as the proximate cause of death, and plaintiff's evidence indicates that a failure to diagnose the injury *prevented the patient from an opportunity to be operated on, which failure eliminated any chance of the patient's survival*, the issue of proximate cause can be submitted to a jury only if there is sufficient evidence showing that with proper diagnosis, treatment and surgery the patient probably would have survived. (Emphasis added).

Cooper, supra, syllabus.

The holding in *Cooper, supra*, indicates that as a condition precedent to a cause of action based upon a failure to receive treatment or surgery due to a nurse's lack of communication to a physician in order for that physician to render treatment, the nurse's failure to act must have ". . . *eliminated any chance of the patient's survival*". As applied to the facts in the instant case, *Cooper* indicates that Plaintiff is unable to sustain a prima facie case of medical malpractice against the Defendant. Even if it is assumed that Nurse Chase was negligent in not calling Dr. Lancione and/or that nurses in the hospital step-down unit were negligent in not calling Dr. Anetalis prior to 1:30 a.m., the evidence is nevertheless clear that those actions alone had not *eliminated* any chance of Mr. Delguzzo's survival. The facts in evidence clearly indicate that Dr. Williams' conduct intervened during Mr. Delguzzo's first visit to the emergency room and cut off any liability that might otherwise be attributed to Nurse Chase for not calling Dr. Lancione at that time.

Further, the evidence is clear that Dr. Anetalis' failure to appear at the hospital, as he advised he would, throughout the night of November 17th, and his later inappropriate order for Mepergan, cut off any liability that might otherwise be found against the nurses in the step-down unit. Since the threshold requirement of *Cooper, supra*, is not met, any effect which this Defendant's nurses' conduct may have had on Mr. Delguzzo's chance of survival was not, as a matter of law, the proximate cause of his death.

The majority opinion has failed to analyze and weigh all of the evidence presented. That opinion also has misunderstandings and mischaracterizations of facts presented in evidence that lead to erroneous conclusions. Finally, the majority seeks to hold the hospital liable in this case for acts and omissions by Dr. Williams, Dr. Lancione and Dr. Anetalis, which is totally inappropriate and completely unsupported by the evidence.

It is the recommendation of this arbitrator that final judgment be rendered in favor of Defendant, The City Hospital of Bellaire, in all respects.

Respectfully submitted,

LANE, ALTON & HORST
155 East Broad Street
Columbus, OH 43215
Phone: (614) 228-6885

By /s/ Gayle E. Arnold
GAYLE E. ARNOLD

IN THE COURT OF APPEALS
BELMONT COUNTY, OHIO
SEVENTH APPELLATE DISTRICT

Court of Appeals Case No. 85-B-33

NANCY DEL GUZZO, EXECUTRIX,
Plaintiff-Appellee,

vs.

THE CITY HOSPITAL OF BELLAIRE,
Defendant-Appellant.

NOTICE OF APPEAL TO THE OHIO SUPREME COURT

Notice of appeal to the Ohio Supreme Court is hereby given by Appellant The City Hospital of Bellaire from the judgment of the Court of Appeals for the Seventh Appellate District, entered by Journal Entry on October 23, 1985. The case involves a substantial constitutional question and is of great public and general interest.

/s/ Gerald P. Duff
GERALD P. DUFF, of the firm
HANLON, DUFF & PALEUDIS,
Co., LPA
46770 National Road West
St. Clairsville, Ohio 43950
Telephone: (614) 695-1444
Attorney for Appellant
The City Hospital of Bellaire

[Filed Nov. 21, 1985]

PROOF OF SERVICE

Service of the foregoing Notice of Appeal was had by mailing a copy of the same this 21st day of November, 1985 to Richard L. Lancione, Esq., Professional Complex, Bellaire, Ohio, 43906; and to John G. Lancione, Esq., 1500 National City Bank Building, 629 Euclid Avenue, Cleveland, Ohio, 44114-3062.

/s/ Gerald P. Duff
GERALD P. DUFF

IN THE SUPREME COURT OF OHIO

Case No. 85-1801

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff-Appellee,

vs.

THE CITY HOSPITAL OF BELLAIRE,
Defendant-Appellant.

[Filed Nov. 21, 1985]

On Appeal from the Court of Appeals of
Belmont County, Ohio
Seventh Appellate District

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT THE CITY HOSPITAL OF BELLAIRE

Richard L. Lancione, Esq.
Professional Complex
Bellaire, Ohio 43906
Telephone: (614) 676-2034

and

John G. Lancione, Esq.
Spangenberg, Shibley, Traci & Lancione
1500 National City Bank Bldg.
Cleveland, Ohio 44114
Telephone: (216) 696-3232
Attorneys for Appellee
Nancy DelGuzzo.

Gerald P. Duff, of the firm
HANLON, DUFF & PALEUDIS CO., LPA
46770 National Road West
St. Clairsville, Ohio 43950
Telephone: (614) 695-1444
Attorney for Appellant, The City Hospital of Bellaire

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THERE IS A PRESUMPTION THAT A NOTICE OF APPEAL, PROPERLY ADDRESSED AND MAILED AND SENT WELL WITHIN THE THIRTY-DAY APPEAL PERIOD, WAS RECEIVED BY THE CLERK'S OFFICE IN TIME. THE COURT OF APPEALS, THEREFORE, ERRED IN DISMISSING THE APPEAL HEREIN.	
Authorities cited in support of Proposition of Law No. 1:	
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PROPOSITION OF LAW NO. 2:	
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TIME PRESCRIBED FOR FILING, THE ORIGINAL OF WHICH WAS MAILED BUT NOT RECEIVED AND FILED BY THE CLERK.

Authorities cited in support of Proposition of Law No. 2:

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Richards v. *Industrial Commission* (1955), 163 Ohio St. 439 ..... 12, 13

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PROPOSITION OF LAW NO. 3:

SINCE THE APPELLEE RECEIVED A COPY OF THE MAILED, BUT PURPORTEDLY UNFILED, NOTICE OF APPEAL, AND THE TIMELY FILED REQUEST FOR PREPARATION OF THE TRANSCRIPT FOR APPEAL PURPOSES, TO DENY APPELLANT'S APPEAL HEREIN WOULD CONSTITUTE A DENIAL OF DUE PROCESS OF LAW AND AN UNCONSTITUTIONAL GLORIFICATION OF FORM OVER SUBSTANCE. THE COURT OF APPEALS' DISMISSAL SHOULD BE REVERSED.

PROPOSITION OF LAW NO. 3

SINCE THE APPELLEE RECEIVED A COPY OF THE MAILED, BUT PURPORTEDLY UNFILED, NOTICE OF APPEAL, AND THE TIMELY FIELD REQUEST FOR PREPARATION OF THE TRANSCRIPT FOR APPEAL PURPOSES, TO DENY APPELLANT'S APPEAL HEREIN WOULD CONSTITUTE A DENIAL OF DUE PROCESS OF LAW AND AN UNCONSTITUTIONAL GLORIFICATION OF FORM OVER SUBSTANCE. THE COURT OF APPEALS' DISMISSAL SHOULD BE REVERSED.

The Fourteenth Amendment to the United States Constitution states, in part:

> "[N]or shall any state deprive any person of life, liberty, or property, without due process of law."

Similarly, the Constitution of the State of Ohio also sets forth due process of law guarantees. Article I, Section 16, of the Ohio Constitution provides that:

> "All courts shall be open, and every person for an injury done him and his land, goods, persons, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

The Constitutional guarantees of due process of law and equal protection of law found in the Fourteenth Amendment to the U.S. Constitution and in various sections of the Ohio Constitution, including Section 16, Article I, have been held by the Supreme Court of Ohio to be "substantially equivalent". *State, ex. rel. Heller* v. *Miller* (1980), 61 Ohio St. 2d 6, 8.

At the outset, it is beyond question that the word "person" as used in the Fourteenth Amendment, includes corporations, at least insofar as it prohibits a state from depriving them of property without due process of law. *Covington & Lexington Turnpike Rd. Co.* v. *Sandford*

(1896), 41 L. Ed. 560. It is also not subject to question that the word "State" as used in the Fourteenth Amendment includes instrumentalities and agencies of a * * *.

* * * *

STATEMENT IN SUPPORT OF JURISDICTION

It can be seen therefore that the original Notice of Appeal was clearly mailed well within rule. The Notice of Appeal mailed on August 30, 1985, to the Clerk, a distance of approximately 35 miles, should be presumed timely received in the ordinary course of mails within the time prescribed for filing the Notice of Appeal on September 11, 1985. Further, the filing of the Request for Transcript with the trial court creates a presumption that the Notice of Appeal was filed.

The primary objective of a Notice of Appeal is to make it known that an appeal is being taken. Nothing more than such notice is required to vest jurisdiction of the cause in the Court of Appeals. The principle function of a Notice of Appeal is to advise the opposite party of the taking of an appeal. In light of the general concept that statutes relating to appeals are remedial and should be liberally construed to the end that the right of appeal may not be defeated, Appellant's actions herein should be construed to such end. The opposite party received a copy of the Notice of Appeal well within the time for filing. The opposite party further received a copy of the Request for Transcript well within the time for filing of the Notice of Appeal. The Request for Transcript contained enough information to apprise the opposite party of the particular judgment which was sought to be reviewed, so as to constitute sufficient notice of appeal.

It is respectfully submitted that the Court of Appeal's *sua sponte* dismissal, under this statement of facts, is patently unfair, and is not in keeping with the spirit of the Rules of Civil Procedure.

The United States and Ohio Constitutions mandate that The City Hospital be afforded due process of law in proceedings before the Courts of the State of Ohio. Due process of law has not been afforded in the proceedings below. The City Hospital has been denied an opportunity to have the underlying cause of action heard on its merits. This is so only because the Clerk of Courts purportedly never received the August 30, 1985, Notice of Appeal, although both attorneys for the opposite party received the Notice well within rule.

The effect of the Court of Appeals decision is to preclude The City Hospital the opportunity to present evidence to a jury. The City Hospital has therefore been deprived of a significant right without ever having had the opportunity for a trial by a jury before such deprivation. This is precisely the type of conduct which the due process clause of the Fourteenth Amendment to the United States Constitution was aimed at prohibiting. There is also the question of offsetting the amounts of the covenants not to sue. The Appellant has these and other important errors to be decided in the appeal before the Court of Appeals.

For the foregoing reasons, this case is of public or great general interest, and would deprive litigants throughout Ohio of substantial constitutional guarantees. As demonstrated by the previously cited quotations in *Foman* v. *Davis*, *supra*, and the previously cited decisions of this Honorable Court, it is respectfully submitted that leave to appeal should be granted to further fulfill the main objective of justice that cases should be decided on their merits, rather than upon procedural niceties and technicalities. In granting leave to appeal in this case, the result will cause just results to be reached in not only this case but many future cases with the same or similar issues. For the foregoing reasons, Appellant The City Hospital requests that this Court reverse the deci-

sion of the Court of Appeals and allow the appeal to be heard on its merits.

Respectfully submitted,

/s/ Gerald P. Duff
GERALD P. DUFF, of the firm
HANLON, DUFF &
PALEUDIS CO., LPA
46770 National Road West
St. Clairsville, Ohio 43950
Telephone: (614) 695-1444
Attorney for Defendant-
Appellant,
The City Hospital

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff

—vs—

JOSEPH L. WILLIAMS, M.D., *et al.*,

and

CITY HOSPITAL OF BELLAIRE,
Defendant-Appellant

NOTICE OF APPEAL
WITH MEMORANDUM IN SUPPORT

Notice is hereby given that City Hospital of Bellaire, Defendant, hereby appeals to the Court of Appeals of Belmont County, Ohio, Seventh Appellate District, from the order overruling Defendant's Motion to Vacate and Motion to Amend Pleadings entered in this action on the 12th day of August, 1985.

In addition, the Defendant, City Hospital of Bellaire, now moves this Court for an order finding its appeal herein to be timely filed and for the appeal to be heard on its merits for the reason set forth in the Memorandum in Support attached hereto and incorporated herein.

Respectfully submitted,
HAYES, COOPER,
CAMPBELL & PREST

By: /s/ Ted S. Cooper
TED S. COOPER
Attorney for Defendant,
City Hospital of Bellaire
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952
Phone: (614) 283-3711

[Filed Sep. 30, 1985]

September 26, 1985

Mr. Randall Marple
Clerk of Courts
Belmont County Common
Pleas Court
Belmont County Courthouse
St. Clairsville, Ohio 43950

Re: DelGuzzo vs. Williams, et al.
Case No. 80-CIV-134

Dear Mr. Marple:

Enclosed please find an original and four copies of Defendant's Notice of Appeal in the above-captioned case. Please return at least one time-stamped copy to us in the envelope provided. Thank you for your cooperation.

Very truly yours,

HAYES, COOPER, CAMPBELL & PREST

By:
MICHAEL J. CALABRIA

MJC/pf

Enclosures

AFFIDAVIT

STATE OF)
) ss:
COUNTY OF)

John G. Lancione, being first duly sworn and cautioned, says as follows:

1. Affiant is an attorney in Cleveland, Ohio representing the Plaintiff in the litigation captioned Nancy DelGuzzo, Executrix, etc. v. Joseph Williams, M.D., et al., being case no. 80-CIV-134 in the Belmont County Court of Common Pleas.

2. Affiant states he received a copy of the Notice of Appeal on behalf of The City Hospital of Bellaire by ordinary mail during the first week in September, 1985.

Further, Affiant sayeth naught.

/s/ John G. Lancione
JOHN G. LANCIONE

SWORN to before me and subscribed in my presence this 8th day of October, 1985,

/s/ Cheryl M. Mackson
Notary Public

AFFIDAVIT

STATE OF)
) ss:
COUNTY OF)

Richard L. Lancione, being first duly sworn and cautioned, says as follows:

1. Affiant is an attorney in Bellaire, Ohio representing the Plaintiff in the litigation captioned Nancy DelGuzzo, Executrix, etc. v. Joseph Williams, M.D., et al., being case no. 80-CIV-134 in the Belmont County Court of Common Pleas.

2. Affiant states he received a copy of the Notice of Appeal on behalf of The City Hospital of Bellaire by ordinary mail on or about September 4, 1985.

Further, Affiant sayeth naught.

/s/ Richard L. Lancione
RICHARD L. LANCIONE

SWORN to before me and subscribed in my presence this 3rd day of October, 1985.

/s/ Theresa E. Huffman
Notary Public

My Commission Expires: Feb. 24, 1989

[SEAL]

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff

—VS—

JOSEPH WILLIAMS, M.D., *et al.*,

and

CITY HOSPITAL OF BELLAIRE,
Defendant-Appellant

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: Court Reporter Alice Reilly:

Please transcribe the proceedings in the above-captioned case conducted before Judge Charles Knapp on February 5, 1985. Please deliver the transcript to the Belmont Clerk of Courts for inclusion in the record on appeal of this matter.

Respectfully submitted,

HAYES, COOPER,
CAMPBELL & PREST

By: /s/ Michael J. Calabria
MICHAEL J. CALABRIA
Attorney for Defendant,
City Hospital of Bellaire
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952
Phone: (614) 283-3711

[Filed Sept. 6, 1985]

PROOF OF SERVICE

A COPY of the foregoing Request for Transcript of Proceedings has been served upon the Plaintiff by placing same in the U.S. Mail, postage prepaid, and addressed as follows, all on this 5th day of September, 1985:

1. Mr. John G. Lancione
   Attorney for Plaintiff
   1500 National City Bank Bldg.
   Cleveland, Ohio 44114

2. Mr. Richard L. Lancione
   Attorney for Plaintiff
   Professional Complex
   Bellaire, Ohio 43906

/s/ Michael J. Calabria
MICHAEL J. CALABRIA
Attorney for Defendant,
City Hospital of Bellaire

HAYES, COOPER, CAMPBELL & PREST
Attorneys at Law
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952

September 5, 1985

Mr. Randy L. Marple
Clerk of Court
BELMONT COUNTY COMMON
PLEAS COURT
Belmont County Court
House
St. Clairsville, Ohio 43950

Re: Nancy DelGuzzo, Executrix, etc. vs.
Dr. Joseph L. Williams, et al.
Case No. 80-CIV-134

Dear Mr. Marple:

Enclosed please find an original and four copies of a Request for Transcript of Proceedings, which we have prepared on behalf of the Defendant, City Hospital of Bellaire. Would you please file the same, returning one of the copies, time-stamped, to our office in the envelope provided. Thank you for your cooperation.

Very truly yours,

HAYES, COOPER,
CAMPBELL & PREST

By: /s/ Michael J. Calabria
MICHAEL J. CALABRIA

[Filed Sep. 6, 1985]

MJC/mm

Enclosures

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff

—vs—

JOSEPH L. WILLIAMS, *et al.*,

and

CITY HOSPITAL OF BELLAIRE,
Defendant-Appellant

NOTICE OF APPEAL

Notice is hereby given that City Hospital of Bellaire, Defendant, hereby appeals to the Court of Appeals of Belmont County, Ohio, Seventh Appellate District, from the order overruling Defendant's Motion to Vacate and Motion to Amend Pleadings entered in this action on the 12th day of August, 1985.

Respectfully submitted

HAYES, COOPER, CAMPBELL &
PREST

By: /s/ Ted S. Cooper
TED S. COOPER
Attorney for Defendant,
City Hospital of Bellaire
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952
Phone: (614) 283-3711

PROOF OF SERVICE

A COPY of the foregoing Notice of Appeal has been served upon the Plaintiff by placing same in the U.S. Mail, postage prepaid, and addressed as follows, all on this 30th day of August, 1985:

1. Mr. John G. Lancione
   Attorney for Plaintiff
   1500 National City Bank Bldg.
   Cleveland, Ohio 44114

2. Mr. Richard L. Lancione
   Attorney for Plaintiff
   Professional Complex
   Bellaire, Ohio 43906

/s/ Ted S. Cooper
TED S. COOPER
Attorney for Defendant,
City Hospital of Bellaire

August 30, 1985

Mr. Randy L. Marple
Clerk of Court
BELMONT COUNTY COMMON
PLEAS COURT
Belmont County Court
House
St. Clairsville, Ohio 43950

Re: Nancy DelGuzzo, Executrix, etc. vs.
Dr. Joseph L. Williams, et al.
Case No. 80-CIV-134

Dear Mr. Marple:

Enclosed please find an original and four copies of a Notice of Appeal, which we have prepared on behalf of the Defendant, City Hospital of Bellaire. Would you please file the same, returning one of the copies, time-stamped, to our office in the envelope provided. Thank you for your cooperation.

Very truly yours,

HAYES, COOPER, CAMPBELL &
PREST

By:
TED S. COOPER

TSC/mm

Enclosures

AFFIDAVIT

STATE OF OHIO)
) ss:
COUNTY OF JEFFERSON)

Now comes Michael J. Calabria and, being first duly sworn and cautioned, says as follows:

1. Affiant is an attorney, with offices in Steubenville, Ohio, and along with Ted S. Cooper, represents the Defendant, City Hospital of Bellaire;

2. That on August 12, 1985, the Court of Common Pleas of Belmont County filed a judgment entry overruling Defendant's Motion to Vacate and Motion to Amend Pleadings.

3. Affiant states on August 30, 1985 he prepared a Notice of Appeal for filing in the case of Nancy DelGuzzo, Executrix, etc. v. Joseph Williams, M.D., et al. pending in Belmont County Court of Common Pleas;

4. That said notice was signed in his presence by Ted S. Cooper and the original plus copies, placed in an envelope addressed to Randall Marple, Clerk of Court, Belmont County Courthouse, St. Clairsville, Ohio 43950. Said envelope, being first class mail and postage prepaid, was placed in the United States mail service in the afternoon of August 30, 1985. Copies of the Notice of Appeal were also mailed that afternoon to plaintiff's counsel, Richard L. Lancione in Bellaire, Ohio and John G. Lancione, in Cleveland, Ohio.

5. That the Notice of Appeal as addressed was not returned by United States Postal Service;

6. That both plaintiff's counsel acknowledge receipt of the Notice of Appeal during the first week of September;

7. That a subsequent Request for Transcript was likewise addressed and mailed September 5, 1985 and time-

stamped by the Clerk of Courts on September 6, 1985, returned to counsel September 13, 1985.

8. That on September 23, 1985, Affiant was notified by plaintiff's counsel that in preparing for the appeal it came to their attention that the Clerk of Courts did not have an appellate file for this case;

Further Affiant sayeth naught.

/s/ Michael J. Calabria
MICHAEL J. CALABRIA

SWORN to before me and signed in my presence this 25th day of September, 1985.

/s/ Patricia L. Freeman
Notary Public

My Commission expires:

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 8-CIV-134

NANCY DELGUZZO, EXECUTRIX, ETC.,
Plaintiff

—VS—

JOSEPH L. WILLLIAMS, M.D., *et al.*,
Defendants

MOTION TO VACATE

Now comes the Defendant, City Hospital of Bellaire, and based upon the inherent common law power of this court; or, alternatively, Rule 60(B) of the Ohio Rules of Civil Procedure, moves this court for an order vacating the judgment entered March 22, 1985 on the basis that said judgment is void. Defendant states this court had no power to award and journalize the judgment under the proceedings set forth in Section 2711.21, Ohio Revised Code, as more fully supported in the Memorandum attached hereto.

Alternatively, Defendant moves this court for an order nunc pro tunc to correct the judgment entered March 22, 1985 for the reasons set forth in said Memorandum.

Respectfully submitted,

HAYES, COOPER,
CAMPBELL & PREST

By: /s/ Michael J. Calabria
MICHAEL J. CALABRIA
Attorney for City Hospital
of Bellaire
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952
Phone: (614) 238-3711

[Filed Apr. 18, 1985]

PROOF OF SERVICE

A COPY of the foregoing Motion to Vacate has been served upon the Plaintiff by placing same in the U.S. Mail, postage prepaid, and addressed as follows, all on this 18th day of April, 1985:

1. Mr. John G. Lancione
   Attorney for Plaintiff
   1500 National City Bank Bldg.
   Cleveland, Ohio 44114
2. Mr. Richard L. Lancione
   Attorney for Plaintiff
   Professional Complex
   Bellaire, Ohio 43906

/s/ Michael J. Calabria
MICHAEL J. CALABRIA
Attorney for Defendant, City Hospital of Bellaire

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DELGUZZO, EXECUTRIX, *et al.*,
Plaintiff

—VS—

JOSEPH L. WILLIAMS, M.D., *et al.*,
Defendants

MOTION TO AMEND PLEADINGS AND FOR TRIAL DATE

Now comes the Defendant, City Hospital of Bellaire, and hereby gives notice that it rejects the arbitrators' award as determined by this court in its decision of March 22, 1985.

WHEREFORE, Defendant moves this court for an order to amend pleadings in accordance with Section 2711.21 of the Ohio Revised Code and for a trial date at which time the issues in this case may be decided by a jury.

In support, Defendant respectfully directs this court's attention to Section 2711.21 (E), Ohio Revised Code, which states in part:

> "(E) Nothing in this section shall be construed to limit the right of any person . . . to be bound by the decision of the arbitrators."

Respectfully submitted,

HAYES, COOPER, CAMPBELL
& PREST

By: /s/ Michael J. Calabria
MICHAEL J. CALABRIA
Attorney for Defendant,
City Hospital of Bellaire
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952
Phone: (614) 283-3711

[Filed Apr. 1, 1985]

PROOF OF SERVICE

A COPY of the foregoing Motion has been served upon the Plaintiff by placing same in the U.S. Mail, postage prepaid, and addressed as follows, all on this 1st day of April, 1985:

1. Mr. John G. Lancione
Attorney for Plaintiff
1500 National City Bank Bldg.
Cleveland, Ohio 44114

2. Mr. Richard L. Lancione
Attorney for Plaintiff
Professional Complex
Bellaire, Ohio 43906

/s/ Michal J. Calabria
MICHAEL J. CALABRIA
Attorney for Defendant,
City Hospital of Bellaire

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DEL GUZZO, EXECUTRIX OF THE ESTATE OF
ETTOR DEL GUZZO, JR., DECEASED,
Plaintiff

—VS—

DR. JOSEPH L. WILLIAMS, *et al.*,
Defendants

MOTION TO MODIFY ARBITRATION AWARD

Now comes the Defendant, The City Hospital of Bellaire, and moves this court for an order modifying the arbitration award by deducting therefrom the value of the Covenant previously entered into between the Plaintiff and Defendants, Joseph L. Williams, M.D.; Bellaire Medical Group, Inc.; Angelo J. Antalis, M.D.; Peter Lancione, M.D. and their surety, The Medical Protective Company of Fort Wayne, Indiana.

For cause, Defendant states that said Covenant was given to joint tortfeasors from which this Defendant is entitled to contribution, all as more fully set forth in the Memorandum attached hereto.

Respectfully submitted,

HAYES, COOPER,
CAMPBELL & PREST

By: /s/ Ted S. Cooper
TED S. COOPER
Attorney for Defendant,
The City Hospital of Bellaire
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952
Phone: (614) 283-3711

[Filed Oct. 29, 1984]

PROOF OF SERVICE

A COPY of the foregoing Motion to Modify Arbitration Award, with attached Memorandum in Support, has been served upon the Plaintiff by placing same in the U.S. Mail, postage prepaid, and addressed as follows, all on this 29th day of October, 1984:

1. Mr. John G. Lancione
   Attorney for Plaintiff
   1500 National City Bank Bldg.
   Cleveland, Ohio 44114

2. Mr. Richard L. Lancione
   Attorney for Plaintiff
   Professional Complex
   Bellaire, Ohio 43906

/s/ Ted S. Cooper
TED S. COOPER
Attorney for Defendant,
The City Hospital of Bellaire

IN THE COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

Case No. 80-CIV-134

NANCY DEL GUZZO, EXECUTRIX,
Plaintiff

vs.

DR. JOSEPH L. WILLIAMS, *et al.*,
Defendants

ANSWER OF THE CITY HOSPITAL

Now comes the Defendant, The City Hospital, erroneously named as Bellaire City Hospital, and for answer to the Second Amended Complaint of the Plaintiff says:

FIRST DEFENSE

1. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 2, 4 and 9.
2. Admits the allegations contained in Paragraph 3.
3. Denies Paragraphs 5, 6, 7, 8 and 10.

SECOND DEFENSE

The Plaintiff's Second Amended Complaint fails to state a claim against this answering Defendant upon which relief may be granted.

THIRD DEFENSE

The Plaintiff's Second Amended Complaint does not state a claim for relief against this answering Defendant upon which punitive damages may be awarded.

FOURTH DEFENSE

The Plaintiff has failed to comply with Ohio Revised Code Section 2307.42.

WHEREFORE, this answering Defendant prays that the Plaintiff's Second Amended Complaint be dismissed, that it have its cost in the defense of this matter and have such further relief as the court may deem just and equitable.

HAYES, COOPER,
CAMPBELL & PREST
421 Market Street
P.O. Box 819
Steubenville, Ohio 43952
Phone: (614) 283-3711

By: /s/ Ted. S. Cooper
TED S. COOPER
Attorney for The City Hospital

CERTIFICATE OF SERVICE

A copy of the foregoing Answer to the Second Amended Complaint was served by placing the same in the United States mail, postage prepaid this 4th day of December, 1980, and addressed to the following:

1. Craig Spangenberg, Esq. and John G. Lancione, Esq.
   SPANGENBERG, SHIBLEY, TRACI AND LANCIONE
   1500 National City Bank Building
   Cleveland, Ohio 44114
   Attorneys for the Plaintiff

2. Marlin J. Harper, Esq.
   KINDER, KINDER & HANLON
   185 West Main Street
   St. Clairsville, Ohio 43950
   Attorney for The Medical Foundation of Bellaire, Inc.

3. Frank J. Micheli, Esq.
   KINCAID, CULTICE, MICHELI & GEYER
   50 North Fourth Street
   P.O. Box 1307
   Zanesville, Ohio 43701
   Attorney for Dr. Joseph L. Williams, Dr. Angelo Antalis and Bellaire Medical Group, Inc.

4. Peter Lancione, M.D.
   3609 Belmont Street
   Bellaire, Ohio 43906
   Third Party Defendant

By: /s/ Ted S. Cooper
TED S. COOPER
Attorney for The City Hospital

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

No. 80-CIV-134

NANCY DEL GUZZO, EXECUTRIX OF THE ESTATE OF ETTOR DEL GUZZO, JR., DECEASED, Dell Knoll Drive, Bellaire, Ohio 43906,

Plaintiff,

vs.

DR. JOSEPH L. WILLIAMS, 3000 GUERNSEY STREET, Bellaire, Ohio 43906

and

THE MEDICAL FOUNDATION OF BELLAIRE, INC., d.b.a The Bellaire Clinic, 3000 Guernsey Street, Bellaire, Ohio 43906

and

BELLAIRE MEDICAL GROUP, INC., 3000 Guernsey Street, Bellaire, Ohio 43906,

Defendants,

and

DR. ANGELO ANTALIS, 3801 Lincoln Avenue, Shadysi[illegible]e, Ohio 43947

and

BELLAIRE CITY HOSPITAL, 4697 Harrison Street, Bellaire, Ohio 43906,

New Parties Defendant.

SECOND AMENDED COMPLAINT

(Jury Trial is Requested)

1. Now comes the plaintiff and says that she is the duly appointed and existing Executrix of the Estate of Ettor Del Guzzo, Jr., deceased, and that she brings this action on behalf of said estate, on her behalf as surviving spouse, and on behalf of the other surviving next of kin for damages in wrongful death and conscious pain and suffering.

2. New Party Defendant, Dr. Angelo Antalis, was the physician responsible for the care and treatment of the decedent from the time of his admission at Bellaire City Hospital on the 17th of November, 1979, through the early morning hours on the 18th of November, 1979.

3. New Party Defendant, Bellaire City Hospital, provides general hospital services through its agents and employees, and the decedent was a patient in said hospital on the 17th and 18th of November, 1979.

4. New Party Defendant, Dr. Angelo Antalis, failed to exercise ordinary care, skill and diligence, such as is customarily exercised by physicians under circumstances such as those existing herein during the time he was the decedent's physician on the 17th and 18th of November, 1979.

5. The New Party Defendant, Bellaire City Hospital, was negligent by and through its duly appointed employees and agents who acted in delivering health care services to the decedent on the 17th and 18th of November, 1979.

6. The defendants herein, Dr. Joseph L. Williams, The Medical Foundation of Bellaire, Inc. and the Bellaire Medical Group, Inc., operated the Emergency Room at Bellaire City Hospital and on November 17, 1979, at about 4:10 p.m., said decedent was presented to the said Emergency Room where his condition was improperly diagnosed and he was discharged.

7. On November 17, 1979, at about 8:00 p.m., the decedent was once again presented to the said Emergency Room whereupon his condition was diagnosed, and he was admitted into the Bellaire City Hospital by the defendant, Dr. Joseph L. Williams.

8. While a patient under the care of the defendants from 8:00 p.m. on November 17, 1979, until 2:10 a.m. on the 18th of November, 1979, he received improper, careless and negligent care by the defendants.

9. The defendant, Dr. Joseph L. Williams, after admitting the said decedent with a diagnosis of intestinal hemorrhage, failed and neglected to follow the patient and abandoned him when he knew that medical care and surgical consultation were necessary to save his life. Such acts represent wanton misconduct and a total failure of care for said patient.

10. As a direct and proximate result of the defendants' joint and several carelessness, negligence and medical malpractice, said decedent came to his premature death on the 18th of November, 1979, causing damages to his estate and surviving next of kin.

WHEREFORE, plaintiff prays damages against the defendants for compensatory and exemplary or punitive damages, all in accordance with existing law, together with all costs of suit and reasonable attorneys' fees.

A TRIAL BY JURY IS HEREBY REQUESTED.

_____

CRAIG SPANGENBERG

_____

JOHN G. LANCIONE

SPANGENBERG, SHIBLEY, TRACI & LANCIONE
1500 National City Bank Building
Cleveland, Ohio 44114
Attorneys for the Plaintiff.

OHIO CONSTITUTION, ARTICLE I, § 5

§ 5 Trial by jury; reform in civil jury system.

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury. (As amended September 3, 1912).

OHIO CONSTITUTION, ARTICLE I

§ 16 [Redress in courts.]

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law. (As amended September 3, 1912.)

UNITED STATES CONSTITUTION

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion

against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(Effective 1868)

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Articles in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the orginal Constitution.

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

(Effective 1791)

OHIO RULE OF CIVIL PROCEDURE

RULE 38. JURY TRIAL OF RIGHT

(A) Right Preserved. The right to trial by jury shall be preserved to the parties inviolate.

(B) Demand. Any party may demand a trial by jury on any issue triable of right by a jury by serving upon the other parties a demand therefor at any time after the commencement of the action and not later than fourteen days after the service of the last pleading directed to such issue. Such demand shall be in writing and may be indorsed upon a pleading of the party. If the demand is indorsed upon a pleading the caption of the pleading shall state "Jury Demand Endorsed Hereon." In an action for appropriation of a right of way brought by a corporation pursuant to Article XIII, Section 5, of the Ohio Constitution, the jury shall be composed of twelve members unless the demand by more than one party in such action the jury shall be composed of the greater number not to exceed twelve. In all other civil actions the jury shall be composed of eight members unless the demand specifies a lesser number; and in the event of timely demand by more than one party in such actions the jury shall be composed of the greater number not to exceed eight.

(C) Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within fourteen days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(D) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(D) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

OHIO RULE OF APPELLATE PROCEDURE

RULE 4. APPEAL AS OF RIGHT— WHEN TAKEN

(A) Appeals in Civil Cases. In a civil case the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within thirty days of the date of the entry of the judgment or order appealed from. A notice of appeal filed before entry of such judgment or order shall be treated as filed after such entry and on the day thereof. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, which ever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the trial court by any party pursuant to the Civil Rules hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the entry of the last of any of the following orders made upon a timely motion under such rules granting or denying a motion (1) for judgment under Rule 50(B); (2) for a new trial under Rule 59; (3) for vacating or modifying a judgment by objections to a referee's report under Rule 53 (E)(7) or Juv.R. 40(D)(7). A judgment or order is entered within the meaning of this subdivision when it is filed with the clerk of the trial court for journalization.

OHIO RULE OF APPELLATE PROCEDURE

Rule 3

(C) Content of the notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. The title of the case shall be the same as in the trial court with the designation of the appellant added, as appropriate. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

Federal Rule of Appellate Proc.

Rule 4. Appeal as of Right—When Taken

(a) Appeals in Civil Cases.

(1) In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in (a)(4) of this Rule 4, a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party; (i) for judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or

granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be *ex parte* unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

OHIO REVISED CODE

§ 2307.32 [Enforcement of contribution; limitation of action; effect of judgment findings by court or jury, release, etc.]

(A) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment debtors by motion upon notice to all parties to the action.

(B) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(C) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right of contribution is barred unless he has either discharged by payment the common liability within the statute of limitations period applicable to the claimant's right of action against him and has commenced his action for contribution within one year after payment, or agreed while action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution.

(D) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(E) Valid answers to interrogatories by a jury or findings by a court sitting without a jury in determining

the liability of the several defendants for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

(F) When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms otherwise provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater;

(2) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

OHIO REVISED CODE

§ 2711.11 Court may modify award. (GC § 12148-11)

In any of the following cases, the court of common pleas in the county wherein an award was made in an arbitration proceeding shall make an order modifying or correcting the award upon the application of any party to the arbitration if:

(A) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;

(B) The arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matters submitted;

(C) The award is imperfect in matter of form not affecting the merits of the controversy.

The order shall modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

OHIO REVISED CODE

§ 2711.13 [Motion to vacate, modify, or correct an award; service.]

After an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code.

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

OHIO REVISED CODE

§ 2711.21 [Arbitration board to hear medical claim.]

(A) Upon the filing of any medical claim as defined in division (D)(3) of section 2305.11 of the Revised Code, the controversy shall be submitted to an arbitration board consisting of three arbitrators to be named by the court. The arbitration board shall consist of one person designated by the plaintiff or plaintiffs, one person designated by the defendant or defendants, and a person designated by the court. The person designated by the court shall serve as the chairman of the board. Each member of the board shall receive a reasonable compensation based on the extent and duration of actual service rendered, and paid in equal proportions by the parties in interest. In a claim accompanied by a poverty affidavit, the cost of the arbitration shall be borne by the court.

(B) The arbitration proceedings shall be conducted in accordance with sections 2711.06 to 2711.16 of the Revised Code insofar as they are applicable. Such proceedings shall be conducted in the county in which the trial is to be held.

(C) If the decision of the arbitration board is not accepted by all parties thereto, the pleadings shall be amended to aver both the fact that the controversy was submitted to an arbitration board and the decision of the arbitration board. The decision of the arbitration board, and any dissenting opinion written by any board member, shall be admitted into evidence at trial upon the offer of any party, if the court conducts a review of the arbitration decision and any other relevant information submitted by the parties and concludes that:

(1) The findings of fact by the arbitration board were not clearly erroneous;

(2) The decision is in accordance with applicable law;

(3) The procedures required for conducting the hearing and rendering the decision were followed fairly and properly without prejudice to either party.

(D) Any party who has not made the offer stated in division (C) of this section may subpoena any member or members of the arbitration board for purposes of cross-examination.

(E) Nothing in this section shall be construed to limit the right of any person to enter into an agreement to arbitrate a controversy underlying a medical claim or to be bound by the decision of the arbitrators.